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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 ALISHA S.,

9 Plaintiff,

10 v.

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.

CASE NO. C18-5814 BAT

**ORDER REVERSING AND
REMANDING FOR FURTHER
PROCEEDINGS**

13 Plaintiff appeals the ALJ's decision finding her not disabled. She contends the ALJ
14 harmfully erred at step two in failing to find migraine headaches, anxiety, and depression are
15 severe impairments, and by failing to account for limitations caused by these conditions in
16 determining her RFC and ability to perform past relevant work. Dkt. 10. For the reasons below,
17 the Court **REVERSES** the Commissioner's final decision and **REMANDS** the matter for further
18 administrative proceedings under sentence four of 42 U.S.C. § 405(g).

19 **DISCUSSION**

20 At step two plaintiff must show she has a medically determinable impairment, and that
21 these impairments are severe. *See Bowen v. Yuckert*, 482 U.S. 137, 145 (1987). The ALJ found
22 plaintiff's migraine headaches and "mental impairments" are medically determinable but non-
23 severe. Tr. 71.

1 **A. Migraine Headaches**

2 The ALJ found migraine headache is non-severe on the grounds the condition either did
3 not last for 12 continuous months or did not cause no more than mild limitations. *Id.* The record
4 establishes plaintiff was diagnosed with migraine headaches and they have persisted for more
5 than 12 months. *See e.g.* Tr. 168, 442, 553, 824-25, 842. The Commissioner does not argue
6 otherwise. Rather the Commissioner argues the Court should affirm because there is evidence in
7 the record establishing plaintiff can perform gainful work notwithstanding her migraine
8 headaches. Dkt. 11. The Commissioner also argues the ALJ properly rejected plaintiff’s migraine
9 headache testimony because there is no independent medical evidence confirming her claims,
10 plaintiff responded well to treatment, a several doctors opined they did not think the migraines
11 were disabling and the ALJ found plaintiff not credible. *Id.* at 3-4.

12 These contentions are impermissible post-hoc arguments. The Court reviews the ALJ’s
13 decision “based on the reasoning and findings offered by the ALJ—not post hoc rationalizations
14 that attempt to intuit what the adjudicator may have been thinking.” *Bray v. Comm’r of SSA*, 554
15 F.3d 1219, 1225 (9th Cir. 1995). Here the ALJ discussed plaintiff’s other conditions and
16 symptoms including her wrist pain, but failed to discuss the evidence regarding her migraine
17 headaches.

18 Similarly, while the ALJ provided reasons to reject plaintiff’s testimony about her arm
19 pain and her mental health problems, the ALJ neither discussed plaintiff’s testimony about her
20 migraine headaches nor provided reasons to discount it. The Commissioner implies the ALJ
21 found plaintiff’s “testimony is not credible” and the finding applies to plaintiff’s testimony about
22 migraines. Dkt. 11 at 4. Such an implication is inconsistent with the Agency’s own rulings. The
23 ALJ was required to apply SSR 16–3p, and in fact noted this in the decision. Tr. 74. The SSR

1 directs that ALJs “will not assess an individual’s overall character or truthfulness in the manner
2 typically used during an adversarial court litigation” because the weight ALJs give symptom
3 testimony does not turn on whether the claimant “is a truthful person.” SSR 16–3p, 2016 WL
4 1119029, at *10. Rather, ALJs “must limit their evaluation to the individual’s statements about
5 his or her symptoms and the evidence in the record that is relevant to the individual’s
6 impairments.” *Id.* Hence a general credibility determination is not a valid basis to reject the
7 entirety of a claimant’s symptom testimony. The ALJ was required to discuss migraine
8 headaches but failed to do so and accordingly erred.

9 The ALJ’s errors in failing to address plaintiff’s migraine headaches error is harmful
10 because in assessing plaintiff’s RFC, the ALJ must assess all relevant evidence, including
11 medical reports and witnesses’ descriptions of limitation, to determine what capacity the
12 claimant has for work. *See* 20 C.F.R. § 416.945(a). As this did not occur, the ALJ’s RFC
13 determination fails to account for all limitations.

14 **B. Anxiety and Depression**

15 Plaintiff contends the ALJ erred in failing to find depression and anxiety are severe
16 impairments. She contends the opinions of Drs. Jonathan D. Allison, Psy.D., and Mary Lemberg,
17 M.D., show these mental conditions cause limitations not accounted for in the RFC
18 determination. Dkt. 10. The ALJ considered the doctors’ opinions, gave them some weight, but
19 concluded plaintiff’s mental health conditions cause no more than mild limitations. Tr. 72-73. As
20 grounds, the ALJ found plaintiff attended only two counseling sessions in college, “in 2013 and
21 2017, with no mental health treatment in between.” Tr. 73. The ALJ also noted plaintiff told the
22 examining doctors “her mental health conditions were not a barrier to work.” *Id.* Plaintiff does
23 not present anything showing the ALJ’s findings are not supported by substantial evidence or are

1 legally erroneous. Because the ALJ may properly discount a physician's opinion that is
2 inconsistent with the record and not supported by objective evidence, the Court affirms the
3 ALJ's determination. *See Meanel v. Apfel*, 172 F.3d 1111, 1113-14 (9th Cir. 1999).

4 Plaintiff also argues the new medical evidence she submitted to the Appeals Council
5 undermines the ALJ's decision. *See* Tr. 13-64. The new evidence are records regarding
6 plaintiff's anxiety and PTSD after witnessing a robbery; the evidence also indicates plaintiff
7 started counseling in January 2018. The new records appear to address new mental health
8 problems. When Drs. Lemberg and Allison evaluated plaintiff in 2016, and 2014 respectively,
9 plaintiff did not report she was traumatized by witnessing a robbery, and the doctors did not
10 diagnose her with PTSD. There is no evidence that plaintiff suffered from PTSD during the
11 relevant period, and as such, the new evidence does not undermine the ALJ's determination. The
12 Court accordingly affirms the ALJ's assessment as to depression and anxiety.

13 CONCLUSION

14 The Court **REVERSES** the Commissioner's final decision and **REMANDS** the case for
15 further administrative proceedings under sentence four of 42 U.S.C. § 405(g). On remand, the
16 ALJ shall assess the impact migraine headaches, develop the record and reassess plaintiff's RFC
17 as needed and proceed to steps four and five as appropriate.

18 DATED this 21st day of March 2019.

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22 BRIAN A. TSUCHIDA
23 Chief United States Magistrate Judge